

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

PR 94-106

PR File No 94-SP4

In the Matter of:
Petition of the Connecticut Department of
Public Utility Control to Retain Regulatory Control
of the Rates of Wholesale Cellular Service Providers
in the State of Connecticut

PETITION OF
THE CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL

A. Introduction

On its own motion, the Connecticut Department of Public Utility Control (Department), pursuant to its regulatory authority and the Budget Reconciliation Act. of 1993, Pub. L. No. 103-66, Section 6002, 107 Stat. 379 (1993), initiated a proceeding, Docket No. 94-03-27 - DPUC Investigation into the Connecticut Cellular Service Market and the Status of Competition, (Cellular Docket) (see Appendix A) to conduct a full investigation of the cellular market conditions including consumer protection issues. The interested parties and intervenors included Springwiche Cellular Limited Partnership (Springwiche); Bell Atlantic Metro Mobile (BAMM); Litchfield County Cellular, Inc. (Litchfield); Cellular Reseller's Coalition (Resellers); Attorney General of The State of Connecticut (AG); the State of Connecticut Office of Consumer Counsel (OCC); Message Center Cellular (Message Center); and Escotel Cellular (Escotel).

The Department held seven days of hearing on this matter. The Resellers in particular, as well as the OCC and the AG presented evidence of anti-competitive and discriminatory practices in the wholesale cellular market. Springwiche, BAMM and Litchfield presented evidence suggesting that the market is fully competitive and that the consumers are being protected by the competitive nature of the market. The Department also heard varying evidence relating to rate of return, market penetration and rate information. After evaluating the record evidence the Department issued its decision in the Cellular Docket, concluding that the Connecticut Bulk Wholesale

Cellular market was not effectively competitive and that it would be in the public interest to retain regulatory control over the bulk wholesale cellular service providers. Accordingly, the Department determined that it should file the instant petition with the Federal Communications Commission (FCC). See Appendix A, Decision Docket 94-03-27 DPUC Investigation into the Connecticut Cellular Service Market and the Status of Competition

II. Petition Evidence

As a basis for its investigation the Department considered the eight criteria suggested by the FCC as the type of evidence to be considered in granting petitions for retention of regulatory authority. In its Decision, the Department analyzed and discussed the various criteria. As a result of its investigation the Department identified particular areas of anti-competitive activities and discriminatory practices that the Department determined created market conditions that were not adequately protecting consumers from rates that are unjust or unreasonably discriminatory.

At the present time the Connecticut Commercial Mobile Radio Services (CMRS), Springwich and BMM provide wholesale cellular service in Connecticut's four New England County Metropolitan Areas (NECMAs) (Hartford, New Haven, Fairfield, and New London) and the Windham arural Service Area (RSA). Springwich and Litchfield provide wholesale cellular service in the Litchfield RSA. Currently Springwich has 15 subscribers while BMM has 11. The third wholesale cellular service provider, Litchfield County Cellular Inc. has no subscribers. In addition, there are approximately 40 paging companies and several specialized mobile radio service providers operating within the state. On a statewide basis, the Connecticut cellular market is controlled by Springwich, BMM and their retail affiliates. According to information submitted in the record of Docket No. 94-03-27, BMM and Springwich, as of year-end 1993, possess a 54% and 46% market share, respectively, in the bulk wholesale cellular market. As outlined below, the Department has determined that the current market conditions do not effectuate true competition and that the Department should retain jurisdiction over the wholesale cellular providers.

The evidence obtained by the Department in its Cellular Docket indicates that the current market conditions sustain anti-competitive and discriminatory practices on the part of the wholesale CMRS providers. In particular the Department has concluded that the wholesale carriers' relationships with their respective retail affiliates result in an atmosphere of anti-competitive behavior. The Department finds disturbing the fact that Springwich and its retail affiliate, SNET Mobility, are located in the same building, on the same floor. See Appendix B, Escobar testimony p. 1006. In addition, the financial officer of the general partner, Springwich, who is in charge of wholesale pricing also is involved with the retail affiliates retail pricing strategies. See Appendix D, Bluemling Testimony pp. 62, 85-92. Further testimony indicates that BMM's relationship with its retail affiliate is of a similar nature except that the retail arm is a division of the same company. See Appendix E, pp. 444-449. The Resellers claim that because of these

relationships the retail affiliates of the wholesale carriers receive advance notice of promotions, as well as learning of the pricing strategies of the independent resellers. See Appendix B, Escobar testimony p. 1004.

The record of Docket No. 94-03-27 also indicates that the retail affiliates currently offer rate plans which are less than the rate that the Resellers can purchase bulk service from the wholesale providers. This occurs because of the bulk volume discounts offered by the wholesale providers which in practice exclude all but the retail affiliates from the best bulk rates plans. See Appendix F Springwich Tariffs Part I, Sheets 13-14, 17, Springwich Effective Rates, pp. 1-5; BMM Tariffs, Sheets 31-33, BMM Effective Rates pp. 1-4; Litchfield Tariffs, pp. 22-27, 32-35. This rate structure has excluded the independent Resellers from competing in certain segments of the market, thus giving the retail affiliates an unfair competitive advantage. The Department believes that this also disadvantages the end-user consumer in that the lack of true competition has maintained retail rates at artificially high levels.

The Department has also concluded that there is evidence that Springwich, in particular, has utilized coercive tactics in its dealings with its customers, the Resellers. The record indicates that the Resellers have been required to discuss their retail rates and competitive pricing strategies with the cellular carriers. See Appendix B Escobar Testimony pp. 1007-1009, 1056-1058. In light of the wholesale/retail relationships discussed above, the Department has determined that these practices are anti-competitive and discriminatory. In addition, the Resellers contend that Springwich has violated its tariffs with respect to charging excessive interest rates, placed liens upon cellular resellers' assets, and has forced these resellers into confidentiality agreements to prevent the resellers from petitioning the Department for relief. See Appendix B Escobar Testimony pp. 1029, 1051-1056, 1084-1086. The Resellers also contend that they have problems with receiving credits for dropped calls, a problem that the retail affiliates do not have, thus placing the resellers at a competitive disadvantage. See Appendix C Mizeski Testimony pp. 8-10.

In addition, the Department has determined Springwich's recent requirement that interstate long distance calls be carried by its affiliate, SNET America, to be anti-competitive as well. See Appendix B Escobar Testimony pg. 1011 and Appendix C Mizeski Testimony p. 10. The Department has determined that Springwich's practice of not providing equal access contradicts the policy of the Connecticut General Assembly, to promote telecommunications competition as established by its passage and signature by Governor Lowell P. Weicker of Public Act 94-83, An Act Implementing the Recommendations of the Telecommunications Task Force.

Although the wholesale carriers allege that the Resellers have not provided sufficient evidence of anti-competitive activities, the Department finds the Resellers' evidence credible. As a result of these anti-competitive practices, the Department intends to initiate a separate proceeding to monitor this situation further. The purpose of Department's review is to ensure that there is a proper mix of management between

the cellular carriers' wholesale and retail affiliates, and a proper relationship between the wholesaler and independent resellers. In addition, the Department also intends to fully investigate the rates of return and rate structures of the wholesale providers and investigate the relationship between the cellular carriers' costs and service rates to ensure that the customers receive fair, equitable and just rates.

The wholesale cellular carriers continually opined during the course of this proceeding that the impending entry of SMRS, ESMR and PCS service providers will create market conditions that will protect subscribers. The wholesale providers also argued that since these service providers will be entering the market imminently, it is no longer necessary for the Department to regulate wholesale cellular rates. In particular the wholesale providers contend that Nextel has targeted Connecticut markets and is currently active in the state pursuing cell sites and constructing towers. The cellular carriers also testified that they believe many of the new services present substitutable opportunities for replacing or significantly reducing the customer need for cellular services.

While the Department acknowledges that the new service providers will provide acceptable alternatives to cellular service in the future, there are no substitutes for cellular services at this time. Based on the Herfindahl-Hirschman indices (HHI) calculated by the Resellers' expert, Mr. King, (based on minutes of use--see Appendix A, Decision pg. 18.), it appears that the highly concentrated nature of the Connecticut CMRS marketplace will not significantly change before the year 2003. In essence, the Department has determined that the competitive threat from other service providers at the present time and during the period following the entry of these services into the marketplace will be minimal. In light of the anti-competitive activities cited above and the determination that the competitive threat is minimal at this time, the Department believes it in the best interest of the consumers to retain regulatory control over the wholesale cellular providers at this time.

The Department also took testimony and considered information relating to rates of return and overall service rates of the wholesale cellular providers. The wholesale carriers argued that there is vigorous competition and that the market will protect subscribers. In contrast, the Resellers argued that the Connecticut market is a duopoly and that the cellular carriers exercise substantial market power and impose rates that are excessive and unjust. While the record of Docket No. 94-03-27 shows that the cellular carriers have offered several promotions since 1987, there is no indication of the impact that these promotions have had on the Connecticut market and its cellular end-users. However, the Department has determined that the greatest benefit from these promotions has been to the retail affiliates because of the bulk wholesale tariff discount structures offered by the cellular carriers. As a result, the Department is of the opinion that the current level of competition present in the CMRS market has not produced reasonable and just rates to all Resellers, with the exception of those offered to the cellular carriers' retail affiliates.

In light of the anti-competitive activities cited above, the wholesale providers present rate structures, and the current state of the Connecticut CMRS market, the Department believes it is in the best interests of the cellular consumers of the State for the Department to retain jurisdiction over the cellular carriers at this time. The Department believes that our retention of rate regulation should not be permanent, but of sufficient duration to allow for the entry of other CMRS providers in the Connecticut marketplace. The Department also believes that a review of the Connecticut CMRS market conditions would be appropriate commencing July 1, 1996. The Department anticipates that PCS and ESMR service providers would be operational by that time and thus allow all CMRS providers to demonstrate the true competitive nature of the marketplace.

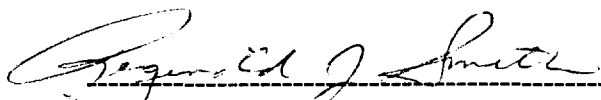
For the reasons outline above, the Department hereby requests that it be permitted to retain jurisdiction over the wholesale cellular providers until the conclusion of its July 1, 1996, review. If the Department determines after its review that the market is not truly competitive the Department hereby requests permission to retain jurisdiction for an additional year, until October 1, 1997.

The Department has established, as required by the FCC, the rules under which the Department intends to regulate the wholesale carriers should this petition be granted. Attached at Appendix G, are the Regulations of Connecticut State Agencies, §16-250b-1 through §16-250b-5 that have been in effect since January 29, 1986. These regulations provide the Department with the standards and procedures for the regulation of the cellular carriers rates and charges, services, accounting practices, and safety and conduct of their operations. In addition, the Department has directed the carriers to revise their tariffs to allow 5 days notice for changes in tariffs for banded rates as opposed to the current 30 days notice. The Department has determined that this flexibility will allow the cellular carriers to respond quickly to competitors.

dated this 8th day of August, 1994.

I, Reginald J. Smith, Chairman, hereby certify that pursuant to §16-250b of the General Statutes of Connecticut, the Department of Public Utility Control has jurisdiction and authority to file this petition with the FCC.

Dated this 8th day of August, 1994.



Reginald J. Smith, Chairman



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL
ONE CENTRAL PARK PLAZA
NEW BRITAIN, CT 06051

Docket No. 94-03-27

DPUC INVESTIGATION INTO THE CONNECTICUT
CELLULAR SERVICE MARKET AND THE STATUS OF
COMPETITION

Date: August 8, 1994

By the following Commissioners:

Thomas M. Benedict
Evan W. Woollacott
Michael J. Kenney

DECISION

TABLE OF CONTENTS

I. INTRODUCTION	1
A. Background of the Proceeding	1
B. Conduct of the Proceeding	1
C. Parties and Intervenors	1
II. DEPARTMENT ANALYSIS	2
A. Introduction	2
1. Federal Actions	2
2. State Actions	5
B. Petition Evidence	6
1. The number of CMRS providers in the state the types of services offered by these providers and the period of time during which these providers have offered service in the state	7
a. Wholesale Cellular Service Providers	7
(1) Springwich Cellular Limited Partnership, Inc.	7
(2) Bell Atlantic Metro Mobile	7
(3) Litchfield County Cellular Inc. Inc.	8
b. Retail Cellular Service Providers	8
c. Paging Services	8
d. Specialized Mobile Radio Services	8
2. The number of customers of each such provider, and trends in each provider's customer base during the most recent annual period (or other reasonable period if annual data is not available), and annual revenues and rates of return for each such provider.	9
3. Rate Information for each CMRS provider, including trends in each provider's rates during the most recent annual period (or other reasonable period if annual data is not available).	11

7. Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, imposed upon CMRS subscribers. Such evidence should include an examination of the relationship between rates and costs. The FCC will consider especially probative the demonstration of a pattern of such rates, if it also is demonstrated that there is a basis for concluding that such a pattern signifies the inability of the CMRS marketplace in the state to produce reasonable rates through competitive forces.	11
4. An assessment of the extent to which services offered by the CMRS providers that the state proposes to regulate are substitutable for services offered by other carriers in the state.	15
5. Opportunities for new entrants that could offer competing services, and an analysis of existing barriers to such entry.	19
6. Specific allegations of fact (supported by an affidavit of a person or persons with personal knowledge) regarding anti-competitive or discriminatory practices or behavior on the part of CMRS providers in the state.	22
8. Information regarding customer satisfaction or dissatisfaction with services offered by CMRS providers, including statistics and other information regarding complaints filed with the state regulatory commission.	28
c. Summary	29
III. FINDINGS OF FACT	30
IV. CONCLUSION AND ORDERS	32
A. Conclusion	32
B. Order	33

DECISION

I. INTRODUCTION

A. BACKGROUND OF THE PROCEEDING

On its own motion, the Department of Public Utility Control (Department), pursuant to Section 16-250b-2 of the Regulations of Connecticut State Agencies (Conn. Agencies Regs.), the December 15, 1993 Decision in Docket No. 90-08-03, Application of Springwich Cellular Ltd. Partnership for a Declaratory Ruling Forbearance from Regulation of Rates of Cellular Telephone Mobile Telephone Service - Reopened Docket, and the Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §6002, 107 Stat. 379 (1993) opened the instant docket to conduct a full investigation of cellular market conditions including consumer protection issues. The purpose of this investigation was to determine whether the Department should petition the Federal Communications Commission (FCC) to retain regulatory authority over bulk wholesale cellular service providers.

B. CONDUCT OF THE PROCEEDING

By Notice of Hearing dated May 3, 1994, public hearings were held on May 12, 13, 16, and 20, 1994, June 3, 7, and 20, 1994. The hearing in this matter was closed on June 20, 1994.

The Department issued a Draft Decision in this docket on July 29, 1994. All parties and intervenors were provided an opportunity to file written exceptions, and to present oral arguments on the Draft Decision.

C. PARTIES AND INTERVENORS

The Department recognized the Office of Consumer Counsel (OCC), 136 Main Street, Suite 501, New Britain, Connecticut 06051; Springwich Cellular Limited Partnership (Springwich), 227 Church Street, New Haven, Connecticut 06510; Bell Atlantic Mobile (BAMM) , c/o Day, Berry & Howard, CityPlace, Hartford, Connecticut 06103-3499; Litchfield County Cellular, Inc. (Litchfield), c/o Brown, Paindiris & Zarella, 100 Pearl Street, Hartford, Connecticut 06103-4506; and the Cellular Reseller's Coalition (Resellers), c/o Cummings & Lockwood, CityPlace I, Hartford, Connecticut 06103-3499. The State of Connecticut Office of the Attorney General (AG), Message Center Cellular, and Escotel Cellular requested and were granted intervenor status.

II. DEPARTMENT ANALYSIS

A. INTRODUCTION

1. Federal Actions

Pursuant to the Federal Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act), state and local rate and entry regulation of all commercial mobile radio services is preempted, effective August 10, 1994. Commercial mobile radio service (CMRS) is defined as any mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. However, Section 332(c)(3)(B) of the Communications Act of 1934 as amended by the 1993 Budget Act, permits states that currently have rate regulation in effect as of June 1, 1993 to petition the Federal Communications Commission (FCC) to extend that authority based on a showing that:

(1) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory;

or

(2) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service with such state.

The FCC provides the states with the discretion to submit whatever evidence they believe is persuasive regarding market conditions and the lack of protection for CMRS subscribers in the state. The FCC indicated that it would consider the following types of evidence, information and analysis to be pertinent to its examination of market conditions and consumer protection:

1. The number of CMRS providers in the state, the types of services offered by these providers, and the period of time during which these providers have offered service in the state.
2. The number of customers of each such provider, and trends in each provider's customer base during the most recent annual period (or other reasonable period if annual data is not available), and annual revenues and rates of return for each such provider.

3. Rate information for each CMRS provider, including trends in each provider's rates during the most recent annual period (or other reasonable period if annual data is not available).
4. An assessment of the extent to which services offered by the CMRS providers that the state proposes to regulate are substitutable for services offered by other carriers in the state.
5. Opportunities for new entrants that could offer competing services, and an analysis of existing barriers to such entry.
6. Specific allegations of fact (supported by an affidavit of a person or persons with personal knowledge) regarding anti-competitive or discriminatory practices or behavior on the part of CMRS providers in the state.
7. Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, imposed upon CMRS subscribers. Such evidence should include an examination of the relationship between rates and costs. The FCC will consider especially probative the demonstration of a pattern of such rates, if it also is demonstrated that there is a basis for concluding that such a pattern signifies the inability of the CMRS marketplace in the state to produce reasonable rates through competitive forces.
8. Information regarding customer satisfaction or dissatisfaction with services offered by CMRS providers, including statistics and other information regarding complaints filed with the state regulatory commission.

Those states seeking to demonstrate that continued rate regulation is appropriate because CMRS is a replacement for landline telephone exchange service for a substantial portion of exchange service provided within the state, petitioners must demonstrate that market conditions are such that they do not protect subscribers adequately from unjust and unreasonable rates, or rates that are unjustly or

unreasonably discriminatory, and a substantial portion of the CMRS subscribers in the state or a specified geographic area have no alternative means of obtaining basic telephone service. The FCC stated that it will require states to provide such information as may be necessary to enable it to determine market conditions prevalent in the state and the range of basic telephone service alternatives available to consumers in the state. Federal Communications Commission (FCC) March 7, 1994 Second Report and Order, GN Docket No. 93-252, (Second Report and Order), pp. 7, 91, 94-96.

2. State Actions

On November 5, 1992, the Department received a Motion to Reopen (Motion) in Docket No. 90-08-03 filed by Bell Atlantic Mobile requesting that the Department reopen that docket to reconsider forbearance from regulating bulk wholesale cellular service rates.

In its Motion, BAMB argued that unlike Springwich's initial request for deregulation in 1990, bulk wholesale cellular rates should be deregulated because effective competition for the benefit of the consumer had finally been achieved. Motion to Reopen, November 5, 1992 p. 2. The Resellers objected to deregulation alleging that the current market conditions do not protect consumers. Several requests for extensions of time to file testimony and interrogatories as well as requests to postpone hearings had occurred throughout Docket No. 90-08-03. On September 27, 1993, BAMB filed its Request to Withdraw (Withdrawal) its Motion to reopen Docket No. 90-08-03. Springwich concurred in BAMB's request to withdraw, while the Resellers, OCC and the AG opposed the Withdrawal of the petition and further argued that should the Department accept the Withdrawal, it should establish a new docket to fully investigate the current market conditions and the status of competition. In its Withdrawal, BAMB requested that it be permitted to withdraw its request for deregulation stating the new "federal legislation ... renders moot the ruling sought by Metro Mobile when it petitioned to reopen." Withdrawal, p. 1. Springwich supported BAMB's request to withdraw and further indicated that current federal policy embraced competition, not regulation as the preferred marketplace norm. Springwich Cellular Limited Partnership's Comments, October 4, 1993, p. 1. The Resellers argued that the federal legislation recognized that states need to continue rate regulation in order to protect consumers if the prevailing conditions of the market fail to do so. Response to Motion of Metro Mobile To Withdraw and Motion to Open New Docket Proceeding in the Alternative, October 8, 1993, p. 1. The Resellers also argued that Connecticut wholesale rates did not reflect prudent costs and that the carriers improperly exercise market control. The Resellers further argued that the market was not fully competitive. Id. p. 2. Likewise, the AG disagreed with BAMB and Springwich, that the federal law unconditionally favors deregulation. Rather, states should continue regulation if the prevailing market conditions fail to do so. Letter from the AG, October 25, p. 1. The AG supported the motion of the Resellers to open a new docket, or, in the alternative to conduct an investigation under the current docket.

Based on the record of that proceeding, the Department determined that while the federal legislation preempts the states from regulating cellular rates under normal conditions, it also provides that states may petition to retain regulatory authority if prevailing market conditions fail to protect consumers. The Department had reopened Docket No. 90-08-03 to consider whether, pursuant to § 16-250b-2 Conn. Agencies Regs., it should forbear from regulating wholesale cellular carriers. The criteria outlined in the regulations set the parameters for that review. Accordingly, the Department

determined that Docket No. 90-08-03 was not the appropriate vehicle in which to petition the FCC for continued rate regulation.

The Resellers in its October 8, 1993 filing in Docket No. 90-08-03 petitioned the Department to initiate a new docket to investigate its claims. Both the AG and the OCC supported this request. Contrary to BMM and Springwich's opinion, the Department determined the Resellers submitted sufficient evidence that market conditions may not be fully protecting consumers to warrant further investigation. The Department also determined that the merits of the Reseller's claims should be fully adjudicated, providing full opportunity for the presentation of testimony and additional evidence. The Department found self-serving BMM and Springwich's arguments that the Department had no authority to conduct the investigation requested by the Resellers. In light of the 1993 Budget Act, the Department determined that it had not only the right, but an obligation to ensure that market conditions protect the subscribers. The Department also believed that it would not be in the consumers' best interest to surrender regulatory control over cellular rates without a complete inquiry. The Department concluded that a full investigation of market conditions was warranted and should be commenced immediately to allow sufficient time for the Department to determine whether it should file its request with the federal authorities or surrender its regulatory control upon conclusion of the investigation. Accordingly, the Department on its own motion opened the instant docket to conduct a full investigation of cellular market conditions including consumer protection issues.

B. PETITION EVIDENCE

The 1993 Budget Act preempts state and local rate and entry regulation of all CMRS effective August 10, 1994. States were provided with the opportunity to petition the FCC to extend that authority based on a showing that (1) "market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory;" or (2) "such market conditions exist and such service is a replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within such state." FCC Second Report and Order, GN Docket No. 93-252, Implementation of Sections 3(n) and 332 of the Communications Act, p. 91. The Department notes from the outset that we do not believe nor does the evidentiary record of this proceeding support a finding that CMRS is a replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within Connecticut.

The purpose of this proceeding is to conduct a full investigation of the bulk wholesale cellular market conditions including consumer protection issues to determine whether the Department should petition the FCC to retain our regulatory authority over Springwich, BMM and Litchfield (collectively the bulk wholesale cellular service providers or cellular carriers). Accordingly, pursuant to the Second Report and Order, the following information is provided:

1. The number of CMRS providers in the state the types of services offered by these providers and the period of time during which these providers have offered service in the state

- a. Wholesale Cellular Service Providers

- (1) Springwich Cellular Limited Partnership, Inc.

<u>Service</u>	<u>Date Authorized</u>
Basic Cellular Service	January 16, 1985
Detailed Billing	"
<u>Service</u>	<u>Date Authorized</u>
Call Restriction	January 16, 1985
Custom Calling Features	"
Call Waiting	
Call Forwarding	
Conference Calling	
Public Cellular Radio Emergency Service	November 29, 1988
Springwich Response to Interrogatory TE-1.	

- (2) Bell Atlantic Metro Mobile

<u>Service</u>	<u>Date Authorized</u>
Basic Cellular Service	June 2, 1987
Call Forwarding	"
No-Answer Transfer	"
Three-Way Calling	"
Call Waiting	"
Toll Restriction	"
Incoming Only	"
Outgoing Only	"
Speed Calling	"

Docket No. 90-08-03 September 25, 1991 Decision, p. 5; BAMM Response to Interrogatory TE-1.

(3) Litchfield County Cellular Inc. Inc.ServiceDate Authorized

Basic Cellular Service

November 7, 1991

Docket No. 91-06-08 Application of Litchfield County Cellular, Inc. for Approval of Wholesale Cellular Mobile Telephone Service Tariff, November 7, 1991 Decision; Litchfield Response to Interrogatory TE-1.

b. Retail Cellular Service Providers

Currently, Springwich has 15 subscribers while BAMM has 11 customers reselling its cellular service. Litchfield currently has no subscribers reselling its bulk wholesale cellular service.

Springwich Response to Interrogatory TE-17-05; BAMM Response to Interrogatory TE-17; Litchfield Response to TE-5.

c. Paging Services

End users also have the option of obtaining paging services from approximately 40 paging companies offering paging services in Connecticut. These companies provide messaging and information based services which, compete directly with cellular usage according to the Springwich witness. A listing of the paging companies providing paging service in Connecticut is attached hereto as Appendix 1. Brennan Testimony, p. 6; SNET Exhibit JPB-1.

d. Specialized Mobile Radio Services

Connecticut end users may also meet their wireless communications needs through Specialized Mobile Radio Services (SMRS). According to the Springwich witness, SMRS companies provide a broad array of mobile communications services to businesses and individuals, including private local area dispatch services, mobile telephone service and mobile data services. A listing of the SMRS providers currently licensed by FCC in Connecticut is appended hereto as Appendix 2. Brennan Testimony, p. 7; SNET Exhibit JPB-2.

- 2. The number of customers of each such provider, and trends in each provider's customer base during the most recent annual period (or other reasonable period if annual data is not available), and annual revenues and rates of return for each such provider.**

Springwich currently has up to 15 subscribers purchasing bulk wholesale cellular service; BAMM has 11 customers; and Litchfield none. Springwich Response to Interrogatory TE-17-05; BAMM Response to Interrogatory TE-17; and Litchfield Response to Interrogatory TE-5.

Relative to the cellular carriers rate of return (ROR) analysis, Springwich states that the calculated rates of return for each of the wholesale cellular providers is reasonable and indicate market conditions are protecting consumers in Connecticut. According to Springwich, the cellular carriers' financial data refutes the Resellers' assertion that the wholesale providers have earned supra-competitive profits and provides no basis for the FCC to sustain a petition by the Department. Springwich states that the calculated rates of return for both carriers demonstrate that competitive market conditions exist today in Connecticut's wholesale cellular market and that these forces adequately protect subscribers. Springwich also states that each cellular carrier's calculated ROR is reasonable and appropriate using any of the benchmarks advocated by the parties in this proceeding. Lastly, Springwich contends that each carrier's calculated ROR demonstrates that market conditions have protected subscribers from unjust and unreasonable rates, rendering further regulation by the Department unnecessary. Springwich Brief, pp. 30-32; Springwich Reply Brief, p. 36.

BAMM states that the cellular carriers' ROR analysis conclusively proves that continued regulation is not required and cannot be justified to the FCC. The BAMM witness, Dr. Hausman has determined that a ROR of 20.7% is appropriate. Dr. Hausman has concluded that Springwich is not earning above a competitive ROR and contends that Springwich may be earning somewhat below a competitive ROR due to the strong competition from BAMM. Dr. Hausman also contends that BAMM is earning sub-competitive returns which do not fully reflect the risks taken by investors and are not supra-competitive or suggestive of monopoly pricing or lack of competition. BAMM Brief, pp. 34, 36, 38.

The Resellers contend that evidence confirming both past and prevailing cellular prices are excessive relate to the ROR and financial projections submitted by the cellular carriers. According to the Resellers, the cellular carriers' financial information when properly interpreted indicates excessive wholesale prices which are consistent with the anticipated 25% rate reduction that will occur in the future following new competitors' market entry. Lastly, the Resellers state that the Department should conclude that 15% is an appropriate benchmark for the purpose of evaluating the propriety of RORs. Resellers' Brief, pp. 10-11, 16.

The OCC states that the wholesale cellular carriers' excess profit levels are evidence of lack of effective competition. The OCC contends that based on the financial information provided by Springwich and BAMM the wholesale carriers have earned, and will continue to earn, excessive profits, and, therefore, are operating without effective competition. The OCC also contends that a reasonable ROR for wholesale cellular carriers is 15%. According to the OCC, a 15% ROR for wholesale cellular carriers is consistent with the California Public Utilities Commission's determination. In addition, the OCC believes Dr. Hausman's determination that a 20.7% return for cellular carriers is reasonable is based on his use of the Capital Asset Pricing Method (CAPM) as opposed to the standard discounted cash flow analysis that is accepted by the Department. The OCC claims that in applying the CAPM method, Dr. Hausman used McCaw Communications (McCaw), which skewed his analysis because of McCaw's high beta coefficient. The OCC recommends that the Department reject Dr. Hausman's 20.7% return in favor of a 15% return for purposes of determining whether cellular carriers' profits are excessive. OCC Brief, pp. 23-30.

The AG argues that wholesale cellular prices are 25% to 33% higher than they would be in a fully competitive environment. The AG concurs with the Resellers and the OCC that a 15% rate of return is reasonable and disagrees with Dr. Hausman's conclusion that 20.7% is a proper return. The AG states that the Resellers' ROR analysis is more reasonable than Dr. Hausman's because the Resellers have performed calculations using approved FCC methodologies. In contrast, the AG finds Dr. Hausman's analysis skewed and questionable because it is based on the CAPM and his use of McCaw Cellular. Therefore, the AG recommends that the Department reject Dr. Hausman's 20.7% ROR in favor of the 15% ROR as posited by the Resellers. AG Brief, pp. 13-16.

The Department used reported historical data in reviewing the evidence presented in this case as to whether the wholesale cellular operators are earning excessive rates of return. That is, the Department reviewed reported data from 1988 through 1993 and did not look at the projected returns for 1994 and beyond. The cellular carriers' historical rates of return range from a low of [PROPRIETARY] to a high of [PROPRIETARY] over the six years of actual reported earnings. Late Filed Exhibit No. 41 indicates that the cellular carriers have been earning what appears to be excessive RORs throughout most of the period. The Department also finds that the projected RORs for 1994 and future years to be speculative due to the fact that we can not be sure of the reliability of the data and the projections that were used. Additionally, the actual effects of technological changes and the entrance of other service providers such as PCS and ESMR will have on the Connecticut cellular industry as we know it today is unclear.

As discussed in greater detail below, the Department does not believe that true competition will exist in the CMRS market until the other wireless service providers have begun providing service to the public and are effectively competing with the incumbent service providers. Based on the bulk wholesale service providers' and the Resellers'

ROR analysis, the Department believes that the record of this proceeding is inconclusive relative to the cellular carriers rate of return and their financial performance since 1987. The Department also believes that Mr. King on behalf of the Resellers and Dr. Hausman have provided a range of reasonable rates of return for the two carriers that must be considered. In the Department's opinion, because of the material difference between the upper and lower limits of this range, the need for further investigation is necessary. Accordingly, the Department will, at the conclusion of this proceeding, initiate a separate docket to review in greater detail each carriers' rate of return. The purpose of this proceeding will be to review and address the carriers financial performance and determine an appropriate rate of return. This proceeding will also entail review of each cellular carrier's cost structure to ensure that its rates and charges are just, reasonable and nondiscriminatory. While the Department does not intend to "rate of return" regulate the cellular carriers, the Department will use this information as a guide to establishing appropriate bulk wholesale cellular rates that may be imposed during the interim period between the present and the point at which market conditions warrant the Department's forbearance from rate regulation.

3. **Rate Information for each CMRS provider, including trends in each provider's rates during the most recent annual period (or other reasonable period if annual data is not available).**

and

7. **Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, imposed upon CMRS subscribers. Such evidence should include an examination of the relationship between rates and costs. The FCC will consider especially probative the demonstration of a pattern of such rates, if it also is demonstrated that there is a basis for concluding that such a pattern signifies the inability of the CMRS marketplace in the state to produce reasonable rates through competitive forces.**

From March 1993 to the present, Springwich has offered various promotions involving the waiver of non-recurring charges and decreases in the monthly cellular number effective rate. During the first promotion, from September 13, 1993 through March 31, 1994, Springwich reduced its cellular number rates by \$2.00 per tier and waived its non-recurring charges. Since April 1, 1994, Springwich has been conducting another promotion by waiving its Hot Line charge through March 31, 1995. Additionally, Springwich has continued its promotional reduction of its Cellular Number Rate by \$2.00 per tier through December 31, 1994. On September 13, 1993, Springwich permanently reduced its cellular number rates by an additional \$2.00. Lastly, on September 15, 1993 Springwich eliminated its monthly minimum usage requirement. Springwich Response to Interrogatory TE-17-11, Attachment B.

BAMM has also conducted promotions and made formal changes to its bulk wholesale cellular service tariff during the past twelve months. For example, on January 1, 1994, BAMM suspended its Service Establishment and Activation Charges for the period January 1, 1994 through March 31, 1994. Additionally, BAMM reduced the monthly cellular access charge from \$20.00 to \$14.00 on August 15, 1993, and peak usage per minute charges from \$0.30 to \$0.28. On August 18, 1993, BAMM eliminated its monthly minimum usage requirements that it imposes on subscribers. BAMM Responses to Interrogatories TE-1 and TE-2. Lastly, on June 14, 1994, BAMM decreased its monthly access charges from \$14.00 to \$10.50 effective July 15, 1994. BAMM June 14, 1994 Letter to the Department.

A copy of the cellular carriers current tariffs and effective rates are attached hereto as Appendix 3.

Springwich believes that market conditions in Connecticut have protected wholesale cellular subscribers from unjust and unreasonable rates. According to Springwich, BAMM's entry into the Connecticut marketplace has invigorated the degree of competition in the wholesale cellular and retail services market significantly. Springwich states that it expects competition between the wholesale providers to continue and accelerate if rate regulation is discontinued. According to the Springwich witness, if total deregulation of the cellular carriers were to occur, it would be able to respond immediately to market place demands without having to revise its tariff and informing its cellular competitors. The Springwich witness also testified that deregulation will allow the company to position its business and customers for an onslaught of new unregulated competition. Springwich Brief, p. 25; Tr. 6/20/94, pp. 1639-1640.

BAMM contends that there is no evidence, information, or analysis that demonstrates specific instances of systematic unjust and unreasonable rates or rates that are unjust or unreasonably discriminatory. BAMM Response to Interrogatory TE-14. Springwich concurs and states that the evidence of this proceeding demonstrates a continuing decline in wholesale cellular rates while network investment by the cellular carriers continues to increase. Springwich also states that forecasts predict future price decreases as the product of new competition, new spectrum-based services and the conversion by the wholesale carriers to digital technology. According to Springwich, the record in this proceeding demonstrates that Connecticut market conditions have protected wholesale cellular subscribers and their customers from unjust, unreasonable and discriminatory rates. Springwich contends that the evidence further shows that such protection will continue absent rate regulation. Lastly, Springwich states that the reasonable RORs earned by both carriers demonstrate that rates are equitable and that the competition between the carriers today and the impending arrival of new competition will continue to produce reasonable rates. Springwich Response to Interrogatory TE-14; Springwich Brief, p. 7; Springwich Reply Brief, pp. 21-26; 39.

In contrast, the Resellers claim that there is ample evidence and information establishing that the cellular industry is not competitive. The Resellers state that the cellular carriers, by virtue of the duopoly structure, are exercising substantial market power and charge prices that are excessive in relation to costs. The Resellers contend that current market conditions do not protect wholesale cellular service subscribers from unjust and unreasonable rates because the market is not fully competitive thereby allowing the cellular carriers to exercise substantial market power. The Resellers also state that it is uncertain when viable competitors will enter the marketplace. Reseller Responses to Interrogatories TE-13 , TE-14.

The OCC argues that there has been minimal price competition between Springwich and BAMM and therefore, no effective competition . According to the OCC, Springwich's access and per minute rates have changed minimally and infrequently between 1987 and August 1993. Likewise, the OCC states that BAMM's monthly access charge and per minute usage charges have remained fixed for the same period. The OCC also states that it is apparent that any wholesale cellular price competition has been minimal and will not change unless regulatory oversight exists and is exercised. OCC Brief, pp. 20-23.

Based on the wholesale cellular service rate information provided by the cellular carriers in this docket, the Department is not persuaded that competition is at the level claimed by Springwich and BAMM. The Department also questions the cellular carriers' contention that market conditions in Connecticut have protected wholesale cellular subscribers from unjust and unreasonable rates. While there have been several promotions conducted by the cellular carriers since 1987, the record does not indicate the number of cellular numbers activated that can be specifically attributed to these promotions. The record also does not indicate, the impact (either positive or negative) Springwich's current cellular number rate reduction promotion has had on the level of competition in the Connecticut marketplace. Likewise, the record of this proceeding is devoid of the impact that the permanent changes in effective rates have had on bulk wholesale cellular service subscribers. What is clear to the Department is the resellers that experienced the greatest benefit from these promotions and rate reductions. Specifically, the cellular carriers' retail affiliates have experienced the greatest benefits from these promotions and rate changes due to the economies of scale they currently receive which are inherent in the bulk wholesale service providers' tiered pricing structures. See for example the Springwich Responses to Interrogatories TE-17-02 (Current Rates and Charges) and TE-17-05 (Number of Activated Cellular Numbers by Reseller), and BAMM's responses to TE-2 Attachment G and TE-17. As the Resellers have most correctly noted in its brief, with respect to Springwich, "(T)he net effect is that Linx has 47,000 lines qualifying for a wholesale rate which is lower than the best wholesale rate Connecticut telephone can obtain on 1,000 lines. Resellers' Brief, p. 28. In the Department's opinion, the current level of competition present in the Connecticut CMRS marketplace has not produced reasonable and just rates as testified to by the bulk wholesale service providers with the exception of the pricing benefits the cellular carriers' retail affiliates receive.

The Department also disagrees with the Springwichee assertion that competition will increase with deregulation and elimination of the advance notification requirements. The majority, if not all of its 15 customers currently resell BMM cellular service. In the Department's opinion, the level of competition will not necessarily increase because each competitor will remain informed of the cellular carrier's activities through customer notification.

Additionally, the Department disagrees with Springwichee's contention that rate deregulation will increase competition between the cellular carriers because the cellular providers will be better able to respond to market conditions without fulfilling the 30 day advance notification requirements to the Department and subscribers. Currently, the cellular carriers price cellular service on a flexible tariff basis. That is, each cellular carrier employs a flexible or banded rate schedule for its cellular service rates and charges. The cellular carriers are permitted to change their effective rates within the bands upon thirty days notice to the Department and subscribers. All rate changes made by the cellular carriers since 1987 have been within their respective rate bands, and therefore have been implemented within the 30 day period without delay. Notification to the Department and subscribers is the only requirement that the carriers must satisfy prior to implementing new rates within the bands.

Banded rate schedules are currently being employed by other telecommunications service providers currently providing service in Connecticut. The Resellers have proposed that the Department reduce the advance notice for rate changes from 30 days to zero subject to the cellular carriers giving all resellers including the cellular carriers' retail affiliates a uniform five day advance notice. Resellers' Brief, p. 35. The Department believes the Resellers proposal is reasonable and consistent with the regulatory treatment afforded competitive telecommunications service providers pursuant to Public Act 94-83, An Act Implementing the Recommendations of the Telecommunications Task Force, provided that the rate changes are within the cellular carriers' approved flexible rate bands. The Department will direct the cellular carriers to amend their bulk wholesale cellular tariffs to provide for a five day advance notice period to subscribers below.

Lastly, the Department questions Springwichee's contention that market conditions (i.e., competitive service alternatives to cellular service) will protect subscribers from unjust rates. Brief, p. 25; Tr. 6/20/94, pp. 1639-1640. As discussed in greater detail below, the mere presence of alternative wireless service providers in the marketplace does not necessarily result in true competition. The Department also does not believe that the record indicates that reasonable rates will necessarily result as other CMRS providers enter the Connecticut marketplace in a deregulated environment. As discussed below, their entry and the point in time as to when PCS and ESMR will effectively compete with cellular service is questionable. Since the Department is unable to make a finding that current bulk wholesale cellular service rates are just and reasonable due to the uncertainty of what constitutes an acceptable ROR and the resulting impact on the cellular carriers cost and rate structure, the Department cannot

make a finding that the Springwich, BAMM and Litchfield rate structures are appropriate. Given the upper range of calculated RORs presented during this proceeding, further review of the cellular carriers financial performance is warranted. Additionally, because the Department is uncertain as to when PCS and ESMR service providers will enter the Connecticut marketplace and what that future market will resemble, we will as part of our investigation noted above, review the cellular carriers' cost and rate relationship to determine if existing rates and charges are just and reasonable to protect subscribers for the interim period until the CMRS market moves to a fully competitive environment.

4. An assessment of the extent to which services offered by the CMRS providers that the state proposes to regulate are substitutable for services offered by other carriers in the state.

Springwich claims that services substitutable for cellular services in Connecticut today include paging, specialized mobile radio services, and mobile data services. According to the Springwich witness, paging companies provide messaging and information-based services that compete directly with cellular usage. The Springwich witness also testified that for many customers, paging replaces cellular service entirely and may be the preferred form of wireless communications. The Springwich witness also contends that end users in Connecticut may also meet their wireless communications needs through specialized mobile radio services (SMRS). According to the Springwich witness, SMRS companies provide a broad array of mobile communications services to businesses and individuals, including private local area dispatch services, mobile telephone service and mobile data services. Additionally, the Springwich witness testified to a specialized mobile radio (SMR) provider's, Nextel, imminent entry into the Connecticut marketplace. Nextel is expected to offer digital enhanced SMR (ESMR) over its SMR spectrum. EMSR is widely expected to be a close substitute to cellular service because EMSR networks will carry data, voice and dispatch signals, and may offer more options to end users than cellular. The Springwich witness asserts that Nextel has targeted the New York/Fairfield County and New Haven/Hartford area as prime markets and is currently active in Connecticut, pursuing cell sites and constructing transmitting towers. Lastly, the Springwich witness testified that SMR-based mobile data service providers present substitutable opportunities replacing or significantly reducing customer reliance on cellular services. Brennan Testimony, pp. 6-9.

BAMM states that paging permits cellular customers to reduce their usage by screening and returning only certain calls, in addition to replacing cellular service entirely under some circumstances. According to BAMM, through the use of a pager, a more costly cellular call can be avoided. BAMM Brief, p. 17. Regarding ESMR, the BAMM witness concurs with Springwich and testified that the initial digital capability of ESMR will offer superior voice quality and security compared to current analog cellular service. Hausman Testimony, pp. 6-7.

An additional service that may be substitutable for cellular service is broadband Personal Communication Service (PCS). The FCC has recently allocated 120 Mhz of spectrum for the construction of PCS networks in its Memorandum Opinion and Order, GEN Docket No. 90-314, RM-7140, RM-7175, RM-7618, Amendment of the Commission's Rules to Establish New Personal Communications Services, June 13, 1994. Late-Filed Exhibit No. 21. In its June 13, 1994 Decision, the FCC stated its intention to license 51 service areas based on Major Trading Areas (MTAs) and 493 smaller service areas based on the Basic Trading Areas (BTA) as identified by Rand McNally in the Commercial Atlas & Marketing Guide (123rd ed. 1992). *Id.*, p. 7. According to the BMM witness, one MTA covers all of Connecticut along with the New York metropolitan area, while the New York City area (including southern Connecticut), New Haven, New London and Hartford will be covered by four BTA licenses. The BMM witness also testified that PCS will provide increased competition to cellular service. Hausman Testimony, pp. 8-9.

The Resellers argue that cellular service can not be reasonably and effectively substituted by other services currently offered in Connecticut. The Resellers also state that cellular service has unique attributes which are not duplicated by other existing services. According to the Resellers, these attributes are that the service be mobile and nonrestricted, permit general access and be a telecommunications service. Additionally, the Resellers contend that the existing services such as traditional wireline service, paging service, and mobile dispatch services all lack one or more of the essential attributes of cellular service which makes them unreasonable substitutes for the cellular user. For example, traditional wireline service lacks the attribute of mobility that a cellular end user may want in order to communicate while in transit or when changing locations. The Resellers claim that paging services lack the attribute of non-restricted telecommunications. That is, paging does not allow for two-way voice transmission and exchange, and facilitates only one-way data transmission. In addition, while the Resellers acknowledge that paging accommodates mobile communication to some degree and its cost is much lower than cellular service, paging's limitations are self-evident in terms of immediate two-way communications. Relative to mobile dispatch service, the Resellers recognize that this type of service possesses some attributes of cellular service because of the two-way communication that it possesses. However, access to mobile dispatch service is limited because it is a closed system operating within a limited area. Resellers Response to Interrogatory TE-11.

The Resellers also argue that Nextel is not available in Connecticut at this time, and it is uncertain when Nextel will be generally available to Connecticut customers, given that the largest state MSA (Hartford-New Britain-Bristol) is only 37th in rank and the only other significant areas Bridgeport and New Haven, rank 54th and 56th respectively. The Resellers contend that Nextel entry in Connecticut will be gradual. Additionally, the Resellers contend that Nextel equipment will be expensive and the anticipated cost of service will be high-priced due to system build-out costs. Lastly, the Resellers state that experimental licenses of the CT-2 and CT-3 (PCS) services have